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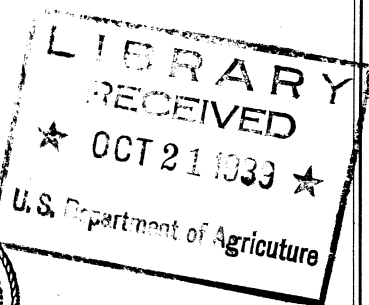
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UNITED STATES
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The
FARM LEASE CONTRACT



UNITED STATES
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YOUR FARM LEASE—

WAS ITS FULL MEANING understood before it was signed?

Is it so written that its meaning will be clear at any later time?

Is it fair to both parties?

Does it give the tenant a reasonable opportunity to make a comfortable living and to get ahead?

Does it require proper and conservative care of the premises leased?

Are all desired reservations to the lease made?

Are the things stated which each party is to do and to contribute?

Does it make clear the rights and privileges of each party?

Does it define the relationship between landlord and tenant and provide for the settlement of differences of opinions?

Does it contain a statement of the procedure to be followed when the relationship of landlord and tenant is to be terminated?

Does it contain the following essentials to a legally complete lease?

1. The date it was made.
2. The names and the final signatures of the contracting parties.
3. The period for which the lease is to run.
4. A description of the property leased.
5. An agreement in respect to the amount of rent to be paid and the time when and the place where it is to be paid.

THE FARM LEASE CONTRACT

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CONTENTS

	Page		Page
Importance of a contract.....	1	Some special problems of share leases.....	18
Principal kinds of lease contracts.....	2	Fundamental principles underlying all lease contracts.....	21
Points to be considered in the farm lease.....	3	Principles underlying share contracts.....	22
Discussion of problems common to all kinds of farm leases.....	7	The personal relationship.....	25

IMPORTANCE OF A CONTRACT

THE IMPORTANCE of the farm lease contract is indicated by the fact that 42.1 percent of all farms in the United States were operated by tenants in 1935 and 10.1 percent were operated by owners renting additional land. Part or all of the land and improvements of about 3,500,000 farms was rented. As the great majority of lease contracts are for 1 year and as the average period which the tenant remains on a farm is about 3 years, it is probable that about 2,000,000 lease agreements must be made or renewed each year.

Some students of the land question believe that even in an ideal system of land tenure a considerable proportion of tenancy would be desirable provided the relationship of landlord and tenant were such as would insure good farming, the conservation of the soil, a fair division of the product, and a progressive community life of which the tenant is an essential part.

It is too much to expect that such a desirable relationship can be established merely by improving the lease contract, but since the lease agreement is the basis of the relationship between landowner and tenant, a careful consideration of its terms may have much to do with promoting harmony and mutual satisfaction, lengthening the period of occupancy, and improving the methods of farming rented land.

Throughout the United States the terms of lease contracts vary so much in accordance with differences in type of farming and other local conditions that it is impossible in a single bulletin to furnish detailed instructions that will apply to all these varied conditions.

The discussion of the leasing system suitable for a given type of farming—dairy farming, grain farming, cotton farming, or fruit farming—would each require an entire bulletin.

Many considerations are common to all leases, however, no matter what the type of farming. This bulletin discusses some of these common considerations and provides a list of points that may need to be considered in the making of a satisfactory lease contract. It has been the experience of many farmers that in the making of such a contract one is likely to overlook or omit some essential points unless memoranda are available to remind him of all the matters that should be considered.

PRINCIPAL KINDS OF LEASE CONTRACTS

The majority of farm leases fall into a few main classes according to the method of rent payment—cash, standing, share, stock-share, share-cash, and the cropper system.

In cash renting the landlord furnishes only the real estate, usually paying the taxes and at least the money costs of upkeep. The tenant furnishes working capital, bears all operating expenses, and receives all the income after paying a fixed amount of cash as rent. The landlord does not assume the risks of farm operation, and usually undertakes no responsibility for management except such supervision as may be necessary to see that the land and improvements are not abused. Obviously the system may prove advantageous to a landlord who, for any reason, cannot give much attention to the business of farming, and it may be preferred by the tenant who has sufficient capital and experience to operate without assistance from the landlord and who does not wish to share the profits of superior management with another.

Standing rent—"lint rent" in cotton tenancy—is a modified form of cash rent. The tenant agrees to pay so many bales of ginned cotton or so many bushels of grain for the use of the farm. The landlord gets the same amount no matter how large or how small the crop. Consequently, he is largely freed from the risk of loss due to bad seasons or bad management and from the necessity of assuming responsibility for the management of the farm. Unlike true cash rent, however, the actual rent received by the landlord in the system of standing rent is subject to variation caused by changes in the prices of the products received as rent.

In share renting the landlord receives a share or fraction of all or of certain crops and sometimes also of livestock products and increase of livestock. More generally than in renting for cash or for a standing rent, he also pays some of the expenses of production. There are numerous variations in different parts of the country and with different types of farming with regard to the contributions and receipts of the respective parties. Because of the greater complexity of the share-renting contract and also because the system of share renting is more generally employed in the United States than any other system of renting, more attention is devoted to it in this bulletin than to other forms of renting.

One of the chief reasons for the popularity of the share-rent system among landlords is the greater control which this system gives them over their farms as compared with the cash-rent system. Another reason is that the landlord stands to realize every year a rental which is directly proportionate to the production and prices of the year. His profit being proportionate to the success with which the farm is worked, it behooves him to give more freely of his experience and capital toward its improvement and proper management than he would do if the place were worked by a cash tenant. Tenants who have little capital and experience can often do no better while acquiring these advantages than to take a farm on shares from an experienced landlord who is prepared to supply a part of the working capital, to exercise a considerable amount of supervision, and to share the risks of the business. On the other hand, if the farm is unusually small or infertile, the tenant may find it unprofit-

able to rent at the customary share and decline to work the place except on a cash-rent basis.

Stock-share renting is a form of share renting in which the landlord and tenant share the ownership of all or part of the productive livestock, usually half-and-half, sharing the expenses and receipts in the same proportion. The general advantages and disadvantages of the system for each party are somewhat similar to those in ordinary share renting. Stock-share renting fosters general livestock farming and encourages the utilization on the farm of feedable grains and other crops. It usually results in a close association of the landlord with the business and often approximates in character a business partnership.

Another modified form of share renting is the share-cash system. Usually this consists of sharing the more important crops, but the tenant pays cash rent for pasture or occasionally for buildings, use of garden, or other special advantages. Usually the system is superior to the share system proper in that the landlord, because of the cash-rent feature, is more willing that the tenant should increase the acreage in pasture and consequently engage in livestock farming to a greater extent than would be the case if the landlord received only a share of the crops and nothing for use of pasture. In some cases the cash rent, or a part of it, is in the nature of a bonus paid in addition to the usual share rent.

A form of share renting commonly known as "cropping" or the "cropper system" in cotton- and tobacco-producing areas, superficially resembles the system of share renting already described in that the cropper pays the landlord a share of the crop. But, the cropper usually contributes nothing but human labor to the enterprise, and under the laws of a number of States is considered a laborer rather than a tenant. The majority of croppers are subject to supervision by the landlord and are dependent on him not only for the capital needed for putting in the crop but also for living expenses while the crop is being produced.

Because the landlord assumes a greater amount of the risk and usually a greater amount of responsibility for supervision under the various forms of share leasing he ordinarily receives a somewhat larger return per acre than under cash leases. Belief that this is the case has been confirmed by most of the farm-income surveys that have been made.

POINTS TO BE CONSIDERED IN THE FARM LEASE

The following is a list of points that may need to be considered in the making of the farm lease. Although it does not cover all possible points, it does contain the more common and the more important considerations. Since cash renting is much simpler than renting on shares, there are many points in the list that do not apply to cash leases.

I. GENERAL DETAILS OF THE CONTRACT

1. Date lease is made.
2. Names and formal designations of landlord and tenant.
3. Number of years lease is to run and dates of beginning and ending.
4. Statement of manner by which the lease is to be terminated or renewed.
5. Brief description of the real estate leased, including name of farm, boundaries, and location with respect to State, county, township, and section.
6. Description of other property included with the real estate in the lease.

II. RESERVATIONS BY THE LANDLORD

1. Right of entry by the landlord for purpose of inspecting buildings and other improvements, crops, and livestock, for making repairs and improvements, for work in connection with crops of the following harvest, and for other purposes.
2. Reservation by the landlord of parts of buildings, granary space, cornercribs, mow space, and any other portion of the real estate the use of which it is agreed he shall reserve.
3. Reservations and restrictions with respect to the use of pasture, fruit, woods, timber, sand pits, gravel beds, fish, and game.
4. Reservation of the right to decide or direct farming operations.
5. Reservation of the right to buy or sell livestock, crops, produce, or supplies for farm use.
6. Limitations on the kind, amount, or value of property that may be bought or sold without informing the landlord and getting his consent.
7. Designation of a bank in which undivided funds are to be kept or deposited, with agreement as to the disposition or use of these funds.
8. On share-rented farms, a statement denying, acknowledging, or limiting partnership relation.
9. Reservation of the right to sell the farm with statement of adjustments to be made in case of sale.

III. ASSURANCES AND GUARANTIES BY THE TENANT

1. To operate the farm in a good and farmerlike way.
2. Not to sublet the farm.
3. To occupy the farm continuously throughout the lease period.
4. Not to attempt to operate outside land in addition; not to thresh for outsiders as a business nor to give preference to any other work over the operation of the farm.
5. To work for the landlord if requested, at specified rates, when not engaged in work on the farm.
6. To commit no waste or damage, and suffer none to be committed; to protect and care for the buildings, fences, trees, and other property.
7. To make inventories at stated periods and to keep records of farm yields, acreage, purchases, sales, breeding of livestock, and to give the landlord access to these records.
8. To yield peaceable possession at the termination of the lease.
9. Not to bring on the premises mortgaged property that may have the effect of impairing the landlord's lien.
10. To participate, so far as practicable, in any applicable crop-adjustment, soil-conservation, or other governmental program for the improvement of agriculture.

IV. ASSURANCES AND GUARANTIES BY THE LANDLORD

1. To make concessions with respect to rent and other obligations of the tenant in the event of disaster to the farm operations as the result of fire, flood, drought, pestilence, or other conditions over which the tenant has no control.
2. To provide peaceable possession, or to protect the tenant's interests, in event of litigation or seizure of the landlord's title by a mortgagee or other claimant.
3. To release to the tenant the residue of crops, livestock, and other products remaining after the rent or rent share is paid and the landlord's lien satisfied.
4. To make available to the tenant necessary credit on reasonable terms.
5. To participate, so far as practicable, and with due regard to the wishes of the tenant, in any applicable crop-adjustment, soil-conservation, or other governmental program for the improvement of agriculture and to divide with the tenant any cash or other benefits received in connection with participation, as provided by such program.

V. RESPECTIVE CONTRIBUTIONS EACH PARTY AGREES TO MAKE TO THE OPERATING CAPITAL

1. General farming machinery, running gear, small tools, and harness, with provision for replacement and repair.
2. Special farm machinery not commonly employed, such as manure spreader, lime or fertilizer distributor, spraying outfit, silage cutter and engine, milking machine, gasoline engine, threshing machine, tractor and tractor equipment, with provision for replacement and repair.
3. Horses and other work stock.
4. Productive livestock, including cattle, hogs, sheep, and poultry.

5. Arrangements for appraising the value and condition of property furnished by either party that the other party may be held in any way accountable for.

VI. RESPECTIVE CONTRIBUTIONS BY EACH PARTY TO EXPENSES

1. CONTRIBUTIONS OF LABOR AND SPECIAL SERVICES:

- (a) Amount of labor to be contributed by each party to general farm work.
- (b) Special arrangements with respect to the employment of members of the tenant's family.
- (c) Arrangements with respect to extra hired labor and labor engaged in threshing, combining, silo filling, baling, shredding, clover hulling, and other operations involving the employment of machines not owned by the tenant.
- (d) Responsibility of the respective parties with regard to hauling and delivery of crops, milk, and other farm products, hauling supplies for farm use, hauling tile, sand, lumber, fencing, and other materials used in making farm improvements.
- (e) Furnishing skilled labor or unskilled labor employed in fencing, tiling, repair or construction of buildings, drilling wells, or other work of farm improvement.
- (f) Contribution of labor employed in mowing, grubbing or pulling weeds and brush, cleaning ditches and drainage outlets.
- (g) Contribution of labor employed in keeping up fences and in incidental patching and repairs to improvements.
- (h) Arrangements for the board and lodging of outside labor, particularly of labor employed by the landlord on farm improvements.

2. EXPENSES ON ACCOUNT OF LIVESTOCK:

- (a) Use of feed purchased or produced on the farm. What stock may be fed from undivided feed and what stock may not be so fed. Limitations on the quantity of undivided feed that may be used for different classes of stock or on the number of stock that may be fed.
- (b) Breeding and veterinary fees; cow testing, registration, and exhibition fees; livestock insurance; horseshoeing and other incidental expenses in connection with productive livestock or work stock.
- (c) Sharing of losses from injury, depreciation, or death of livestock.

3. OTHER EXPENSES:

- (a) Seed, including grass, clover, alfalfa, and cover crops, general farm crops and plants used in the raising of truck crops, small fruits, and tobacco.
- (b) Setting out or caring for fruit and ornamental trees and hedges.
- (c) Barrels, boxes, crates, bags, bagging, baskets, cans, and other containers.
- (d) Manure, lime, phosphates, and other fertilizers.
- (e) Spray material for field crops and fruit trees, material for treatment of seed and inoculation of soil for legumes.
- (f) Machine bills for threshing, combining, ginning, shredding, baling, silo filling, clover hulling, and corn shelling.
- (g) Coal, gasoline, distillate, and oil for farm use, binder twine.
- (h) Telephone.
- (i) Storage, freight, buying, and marketing costs.
- (j) Insurance on farm crops, feed, supplies, and implements.
- (k) Taxes on property other than real estate, water assessments, and irrigation-ditch upkeep.
- (l) Real estate insurance and taxes, including school and road taxes.
- (m) Hiring additional pasture and other land outside of the regular farm area.
- (n) Materials for making or repairing farm improvements.

VII. AGREEMENTS PERTAINING TO PAYMENT OF RENT

- 1. Cash rent for the entire farm or portions thereof, with specifications as to amount, time, and place payable.
- 2. Rent payable in terms of a fixed quantity of a farm product, with specifications as to amount, quality, time, and place payable.
- 3. Rent share of the various farm products with specifications concerning time, place, method of division, and responsibility of tenant for delivery.
- 4. Work to be performed or farm improvements to be made by the tenant in lieu of rent.
- 5. Specified quantities of milk, butter, eggs, firewood, feed, fruit, and other products for landlord's household use, and arrangements with respect to delivery of them.

6. Privileges for which special rent is or is not to be paid.

(a) The farmhouse, habitation for laborers, and buildings for livestock, tools, and crops harvested.

(b) Garden spot and pasturage.

(c) Use of small areas of land for raising special forage crops.

(d) Use of fruit, firewood, milk, eggs, butter, and other products for tenant's household, or for laborers.

(e) Use of undivided grain, hay, or other crops for livestock kept by the tenant for his personal advantage.

VIII. SPECIFICATIONS WITH RESPECT TO THE CARE, USE, AND IMPROVEMENT OF THE REAL ESTATE

1. Fruit, shade trees, forest trees, and down timber.

2. Drains, ditches, bridges, and roads.

• 3. Time, frequency, and manner of mowing weeds and brush in pasture, along roads and fence rows, and around buildings.

4. Windmill, engine, and pumps.

5. Buildings, fences, and gates.

IX. SPECIFICATIONS WITH RESPECT TO FARMING METHOD AND PROCEDURE

1. Specifications as to acreage, location, and rotation of various crops.

2. Enumeration of crops that may not be raised.

3. Special regulations with respect to the method of growing each crop, including the details with respect to preparation of the land, time and manner of planting, kind of seed, method of manuring or fertilization, subsequent care, harvesting, storage, and marketing, or time and manner of division.

4. Limitations or restrictions on the sale or removal of crops, on the pasturage of crops, and on the handling or removal of straw, fodder, manure, etc.

5. Number and kind of livestock to be kept and the upper and lower limits of the same.

6. Regulations with regard to the number of stock that shall be allowed to run on pasture and times when pastures may or may not be used.

7. Provision for the ringing of hogs and prohibition of the keeping of breachy livestock.

Specifications respecting the methods of farming and the procedure to be followed may be made clearer if, in making them a part of the lease, they are accompanied by a map of the farm. The map may show such details as the use made of the land in past years, previous rotation system, present use of the land, rotation to be followed in the future, the drainage system, past and present policies with respect to clearing, liming, manuring, and fertilizing.

X. AGREEMENTS WITH RESPECT TO THE PROCEDURE TO BE FOLLOWED AT THE TERMINATION OF OCCUPANCY

1. Disposition of crops growing, unfed or unsold, or of feed and supplies remaining on hand.

2. Disposition of farming equipment, work animals, and other livestock owned on joint account.

3. Specification of number of acres that must be left plowed, seeded down, planted in wheat or other crops, or in pasture.

4. Compensation for improvements made by the tenant, including construction of buildings and fences, digging of wells, drainage work, clearing of land, setting out trees and small fruits, planting of hops, asparagus, rhubarb, or other perennial plants.

5. Compensation for unexhausted additions made by the tenant to the fertility of the soil.

6. Compensation for excessive dilapidation and deterioration that the tenant is responsible for.

7. Authority for removal of improvements made by the tenant without assistance or compensation by the landlord, such as fences, hog houses, cornercribs, water troughs.

8. Settlement of outstanding indebtedness.

XI. PROVISIONS RELATING TO ENFORCEMENT OF CONTRACT

1. Provision for the settlement of disputes and differences of opinion by arbitration or otherwise.
2. Provision for fulfillment of terms of the contract by heirs, executors, administrators, or assigns, in the event of death or disability of one or both parties.
3. Conditions that will constitute a forfeiture of the lease, and method of determining rights of landlord and of tenant in the event of termination by forfeiture.
4. Provision for penalty to be paid by either party according to a stated scale in the event of failure to perform certain agreements in the contract.
5. Right of the owner to have work that is neglected by the tenant performed at the tenant's expense.
6. Acknowledgment of the existence of a lien to secure to the landlord the payment of the rent and the performance of specified agreements.

XII. FINAL DETAILS

1. Signatures of the parties and their witnesses.
2. Sealing and recording.

DISCUSSION OF PROBLEMS COMMON TO ALL KINDS OF FARM LEASES

FORM OF THE LEASE

A written lease is more satisfactory than a verbal lease. If one of the parties should die, a written contract protects his estate from false claims by the other party. A written lease is likely to be more carefully considered by both parties, and its terms defined with greater precision. Moreover, it serves as a memorandum to both parties, so that the actual terms of the contract may not easily be forgotten. In practically all of the States the laws provide that a lease for a period longer than that specified by law (commonly 2 or 3 years) shall be considered as creating only an estate at will, unless the contract is in writing and unless it complies with the requirements specified with regard to signatures, witnesses, or other formalities.

Standard printed forms for farm lease contracts may often be obtained from printing establishments, stationers, lawyers' offices, and banks. Such forms usually contain insufficient space for the numerous special conditions of a detailed farm lease. But, a standard lease form may assist in providing legal terminology and such legal specifications as may be peculiar to the law of the State. It is desirable that the landlord and tenant agree on the terms of the contract and then prepare a lease embodying these agreements. After the terms of the lease are agreed upon an attorney may be consulted, if desired, to aid in giving the correct legal form.¹

The legal essentials to the validity of a lease contract are definite agreements as to (a) the extent and bounds of the property leased, (b) the term of the lease, and (c) rate of rent, together with specifications of time and method of payment. It is not usually necessary that a lease contract be recorded in order to be valid, but recording may have the advantage of serving notice to third parties of the exist-

¹ In the following discussions, suggested forms of statement for various kinds of clauses are included but these are for illustration; it is not advised that they be rigidly followed.

ence of the contract. However, in probably a majority of the States the physical possession of the property by the tenant is held to constitute notice to third parties of his rights in the property.

DESIGNATION OF PARTIES

In framing any legal contract it is important to designate accurately the respective parties. It is customary to use the terms "party of the first part" and "party of the second part" to designate the respective parties, using the word "parties" for "party" where appropriate. In order to shorten and simplify the contract it may be well to define the meaning of these expressions at the beginning of the lease, and wherever possible to designate the parties simply as "the landlord" and "the tenant." Such a definition may read as follows:

This agreement, made this first day of March 19—, between John Smith, party of the first part, hereafter called "the landlord," and Richard Brown, party of the second part, hereafter called "the tenant," witnesseth, etc.

DESIGNATION OF PROPERTY TO BE USED BY TENANT

Every farm lease, whether cash or share, should indicate clearly what property is to be used by the tenant and what is to be reserved from use. Generally it is easier to specify the property reserved from use. All the property not so specified will by implication be subject to use by the tenant under the contract of lease. The particular items of restriction may vary from farm to farm, as, for instance, in the amount of use the tenant may make of standing timber. The reservations may include such items as use of fruit, wood, standing timber, minerals (in the case of a long lease), fish and game, gravel beds, sand pits, certain rooms in the house, portions of outbuildings, etc.

In the case of farms or estates where it is the practice to rent principally the crop land to tenants it may be desirable to designate what use the tenant may make of land and buildings other than the crop land. Frequently the tenant is given free use of a residence, a garden spot, pasturage for a limited number of stock, and, where available, the privilege of obtaining firewood and fruit.

LENGTH OF LEASE PERIOD

One of the most important questions to be determined is the proper length of the lease period. In the United States farm leases have been predominantly of short duration, the majority for 1 year. In England there were many experiments during the early part of the nineteenth century with leases of from 7 to 21 years. Scotland continues to be a country of long leases, although it has become customary there to modify the long lease by provisions for terminating it at certain definite times during the period of the lease by giving sufficient notice, as at the end of the second, fourth, or sixth year. In England long leases have generally given place to the 1-year lease with guaranty of compensation for improvements in accordance with the provisions of the agricultural-holdings acts.

These extensive experiences have shown clearly the advantages and disadvantages respectively of long and short leases. In the case of long leases for cash rent the actual cash rental value of the land may become out of line with the rent specified in the lease on account of

changes in prices and other conditions. Such objection to long-term cash leases can be overcome largely when the amount of cash rent regarded as due in any year is made to vary with prices of farm products grown on the farm and with the amount of products reasonably obtainable from the farm. The landlord may be prevented from taking advantage of favorable opportunities to sell the land unless the lease contains a clause permitting sale. Such a clause, however, tends to nullify the long-term character of the lease unless accompanied by provisions for compensating the tenant substantially for termination by sale. Experience in England showed that tenants often found it to their personal advantage to use the land to its detriment in the last years of a long lease, and it was necessary to introduce clauses carefully restricting the method of farming in the last years of the contract. Still another objection to the long lease is that although it is binding on the landlord, it may have but slight binding effect on the tenant who has little property.

The long lease enables the tenant to undertake extensive improvements like liming or tiling and to engage in systems of rotation covering a considerable period of years without fearing that the fruits of his labor will be lost through the termination of the lease. But, this advantage may be obtained under the short lease when the lease contains provisions for compensating the tenant for unexhausted improvements made by him. Particularly is this true when such short-term leases are so made as to be automatically renewable until the giving of adequate notice. Under automatically renewable leases the inclination to assume that the agreement may continue for an indefinite number of years would be increased if each party to the agreement were to assure the other of a reasonable compensation for disturbance, to be paid by the party who chooses to exercise the option to terminate the lease.

In the past there has been more reason in the United States than in England for short tenures. Land in America has changed owners much more frequently than land in England. In England many landlords have only a life estate in the land and not the right to sell. England is predominantly a land of cash renting, whereas in the United States more than twice as many farms are rented on shares as for cash. Since the amount of the landlord's share depends largely on the efficiency of the tenant the landlord is not likely to want to enter into a contract for a long period until he is sure of the tenant's efficiency. Then, because of the comparatively intimate relationship that usually exists between landlord and tenant in share farming, the success of the enterprise depends to a large extent on the personalities of the two parties and on their ability to work together harmoniously. Many of the young tenants are compelled at first to rent inferior farms, and they wish to retain them only until they can obtain better ones.

For these reasons it is probably wise to start with a 1-year lease, but with a clause providing for renewal. Such a clause for a lease terminating March 1 may read as follows:

The second parties shall have the privilege of notifying the first parties in writing on or before the first day of September, 19—, that they have elected to renew this lease for the second year, and such election shall be binding upon the first parties unless they notify the second parties in writing on or before October 1, 19—, that they do not desire a renewal of this lease on their part. If the lease is renewed, the same right of election shall apply to the year 19—.

After the two parties have become thoroughly acquainted and it has become clear that they can work together harmoniously and effectively, it may be desirable to enter into a lease contract of sufficient length to enable the tenant to engage in systematic farm improvement involving the investment of capital and labor for which an immediate return will not be forthcoming. It may be provided that either party may dissolve the arrangement by paying compensation to the other party to an amount specified in the lease. This enables either party to escape from fulfilling the complete period of a long-term lease if emergency makes such action desirable. But such a dissolution should not be permissible except at the end of the farm year, nor should it be permissible except on the fulfillment of those contract provisions which would have to be fulfilled at the termination of the regular period of the lease, such as compensation for unexhausted improvements made by the tenant. A tenant properly safeguarded against the risk of loss that might be suffered through having a year-to-year lease terminated at the end of some year might be fully as much encouraged to improve a farm by those safeguards as he would be by a long-term lease.

Whether the lease should be for 1 year or for a longer period is likely to be determined in part by circumstances. Thus, when the landlord furnishes all the operating capital, makes all the improvements at his own expense, and provides for the maintenance of fertility, there may be little reason for a lease running longer than 1 year. On the other hand, when the contract calls for the clearing of land by the tenant in return for the free use of it or for use at a nominal rent, a lease of at least 5 or 6 years may be necessary. Similarly, when the tenant is expected to plant a considerable acreage in fruit or in perennial crops, a term of several years may be desirable. In fact, any lease contract that requires a considerable investment of irremovable capital on the part of the tenant may necessitate either a lease of considerable duration or agreements for compensation at termination for unexhausted improvements made by the tenant. It should not be assumed, however, that either a long lease or provision of compensation for unexhausted improvements will alone induce good farming. The absence of both arrangements may tend to discourage an efficient tenant from pursuing sound methods of agriculture, but other provisions in the lease may be necessary to compel the inefficient and improvident tenant to use such methods. When this is the case, specific requirements concerning the system of farming should be accompanied by stipulations permitting careful supervision on the part of the landlord.

DATE OF BEGINNING

The date of beginning the lease year differs in various sections of the country but is usually when the more important crops have been harvested and sold and before preparations for crops of the following harvest begin. In the Corn Belt, the customary date is March 1; in the South, January 1; in areas where winter wheat is the principal crop, August 1.

DISAVOWAL OF PARTNERSHIP RELATION

The relationship of landlord and tenant is not ordinarily that of a partnership. The latter involves joint liability to an unlimited extent for all debts created by either party in the name of the firm,

equal voice in the management of the business, and other conditions that are not characteristic of the relation of landlord and tenant. Because the terms of many lease contracts, especially the so-called stock-share leases, are of such a character as to suggest the actual relationship to be a partnership, it is sometimes customary to include a clause in the lease disavowing the partnership. It is generally held by the courts, however, that parties to an agreement cannot prevent the creation of the partnership relation and its consequent bearing with respect to third parties, provided the agreement itself and the relations between the parties thereto possess the elements of a partnership. It is the facts that govern and not the name by which the parties denominate their relationship, so far as concerns the rights of third parties. But, such a clause may clarify the respective obligations of the parties to the contract with reference to one another.

A clause containing such a disavowal may read as follows:

Said parties to this lease shall be in no sense partners. Neither shall bind the other to any obligations nor incur debts for the payment of which the other party might be liable without the written consent of that party.

CONTINUANCE OF LEASE AFTER DEATH OF EITHER PARTY

To insure the continuance of the contract the following clause may be inserted:

It is mutually agreed by and between the parties hereto that all the conditions and obligations of this contract shall extend to and be obligatory upon their heirs, successors, executors, administrators, and assigns.

PROCEDURE IN EVENT OF SALE

If, for the accomodation of a purchaser who would want rather immediate occupancy of the farm, a clause is used providing a way to terminate the lease prior to its regular ending, the interests of the tenant should be adequately protected. The following will illustrate this type of clause:

It is hereby agreed that, in case of sale of the premises during the occupancy of the tenant, and in case the purchaser should desire occupancy before this lease could be regularly ended, the tenant hereby agrees to give up to the purchaser the premises at once on payment to the tenant of a fair and reasonable compensation for such surrender, and if he and the purchaser cannot agree as to the amount of such compensation it shall be left to three disinterested appraisers, of whom the tenant shall choose one, the purchaser one, and the two so chosen shall choose a third one. The decision of the appraisers so chosen shall be final as to the amount of compensation to be paid by the purchaser to the tenant.

ASSIGNMENT OF LEASE

The assignment of a lease contract by one tenant to another is a matter of considerable concern to the landlord, for on the personal honesty and efficiency of the tenant may depend the amount of rent (in case of share contracts), the security of the rent payment, and the care of the property intrusted to the tenant. Although the assignment of a lease by a landlord is not usually a matter of great concern to a tenant, it is as well to include in the contract a clause forbidding such an assignment without the consent of both parties, as follows:

Except in case of sale, as provided above, this lease shall not be assigned or transferred to anyone unless on written consent of both parties, and no one but

the party of the second part, his family, and hired help shall occupy the premises or any part thereof during the term of this contract, nor shall the premises or any part thereof be sublet without the written consent of the first party.

RIGHT OF ENTRY AND YIELDING OF PEACEABLE POSSESSION

The landlord should reserve a right of entry, even when he does not participate in supervision of farm operations. Such a reservation may be expressed as follows:

The landlord reserves the privilege of going upon said farm at any time and at all times to look after his interests, to do work, or to have work done, either personally or by agent, employee, or employees.

Assurance of peaceable possession at the termination of the lease may be provided for as follows:

The tenant covenants and agrees with the landlord that at the expiration of this lease, by limitation or otherwise, he will peaceably yield up possession of said premises in as good condition as they were at the beginning of this lease, natural wear and damage excepted.

PROVISIONS FOR CARE OF PREMISES

However much the landlord's position may be strengthened by provision made in the contract requiring tenants to take proper care of the farms intrusted to them it is at least fully as important that a landlord so select and deal with his tenants that they will farm and care for the places as they should. In this connection statements made elsewhere in this bulletin have a bearing. (See p. 26.) Provisions for care of the premises may be in general terms or detailed. If the latter, there may be great differences in the actual provisions according to the special circumstances and terms of the agreement.

The following is a general clause which provides against unnecessary waste or damage:

The tenant agrees that he will not commit or suffer to be committed any waste, damage, or strip of said premises, as, for instance, cutting wires, removing sections of fence, failing to oil pumps and windmills, or tearing down fences for purposes not required in the ordinary course of farming.

If the tenant is expected to keep buildings and fences in repair, as is frequently the case, a clause like the following may be written into the lease:

The tenant agrees to keep the buildings, fences, and other improvements on said premises in as good repair and condition as the same are when he takes possession, or as good as they may be put in by the lessor during the term of the lease, ordinary wear, loss by fire, or unavoidable destruction excepted.

Among the details that may be specified with respect to care of the premises, are to keep the windmill and other pumping machinery properly oiled and cared for and to repair any damage to such machinery, except when damage is due to action of the elements; to take proper care of trees, ornamental vines and shrubbery about the buildings, in the yard and garden, and to prevent injury to them; to cut all hedges at least twice each season and to burn the brush if of considerable quantity; to keep open all necessary ditches; and to keep buildings and fences in good repair. Other specifications having to do with the care of the farm land will be mentioned in the discussion of farming specifications. (See p. 14.)

Which of the two parties should be responsible for the making of repairs will depend so much on the circumstances of the case that it is difficult to lay down a rule that should always be followed. In general it may be said that the tenant should repair all breakages and damages due to his own fault or to the special ways in which he uses the property. On the other hand, such repairs as would be necessary, even if the property were not in use, should largely be at the expense of the landlord. There may be other repairs to which both parties can contribute with advantage to themselves.

IMPROVEMENTS

Making improvements, as distinguished from ordinary repairs, is supposed to add to the value of the farm, and the greater part of the expense should be defrayed by the landlord. But if the rent is not to be raised after improvements are made, a tenant who has reasonable security of occupancy may properly be expected to contribute toward making the improvements. The general practice is for the landlord to furnish all materials used, together with all skilled labor employed, and for the tenant to do any necessary hauling of materials, to board the skilled laborers, and to furnish occasional unskilled labor. But if the tenant is called upon to furnish any unusual amount of labor on the improvements or to furnish labor at a time when it is needed for ordinary farm work he should be repaid for such labor at its actual cost to him. Some landlords agree with their tenants upon a wage scale to be followed in payment for special labor contributed by the tenant on the improvement of the farm. The tenant's contribution should be determined by the extent of benefit he may be expected to derive as compared with benefits accruing to the landlord or later tenants. In the case of temporary fences constructed under a cash lease, nearly all of the benefit is to the tenant. Interior papering and decorating of the house may benefit any later tenant, and some landlords furnish the materials for such work if the tenant is willing to do the work in an acceptable way.

INSURANCE

It is usually the custom for the landlord to pay the expense of insuring buildings. As fire insurance contracts may become invalid through failure of the insured party to protect the property insured against unnecessary hazards, it may be well for the landlord to acquaint the tenant with the nature of the covenants of his fire insurance policies and to include in the lease contract a clause such as the following:

The tenant agrees not to do, suffer, or permit to be done any act in violation of any provisions of any policy of insurance upon any of the crops, buildings, or other property upon said premises or which shall increase the premium thereon, and that he will take reasonable precaution to prevent the occurrence of destructive fires and explosions.

TAXES

The landlord usually assumes the responsibility for all real estate taxes, both in cash and share leases. Occasionally, however, the tenant agrees to work out the road tax. Taxes and insurance on

operating equipment, livestock, and other property are usually paid by the owner of such capital, being shared when the property is jointly owned.

FARMING SPECIFICATIONS

It is customary to include in farm leases a clause stipulating that the tenant shall "well and faithfully till and farm the premises above described in a good and farmerlike (or husbandmanlike) manner." Such a clause requires only that the tenant shall not violate the conventional standards of farming prevailing in the neighborhood.

It is usually desirable, both in cash and share leases, that more detailed specifications with respect to the method of farming be included. In the case of cash leases these specifications will take the form principally of provisions for safeguarding the fertility of the land. In share contracts the landlord is vitally interested in the annual production of the land and has a right to include such provisions as may be necessary to insure efficient farming. When the landlord can give considerable attention to supervision, and it has been agreed that he shall do this, detailed farming specifications need not be included in the lease contract. In any case such restrictions should not unduly fetter the tenant so that he is handicapped in his efforts to operate the farm efficiently.

The list of farming specifications is sometimes made a distinct and separate part of the contract. To make its provisions clear it may be accompanied by a map of the farm showing such things as the proposed field system, location of permanent pasture and woodland, perennial crops not to be plowed up, fields to which manure is to be applied each year, drainage ditches, fences, roads, and other essential considerations.

The details that may be specified are so numerous and vary so widely, according to the individual case, that it is impracticable to discuss them fully in this bulletin. For instance, in some localities farm practice may not give proper recognition to the fertility lost by the burning of strawstacks and cornstalks, and in such localities it may be well to designate that the straw shall be spread and the cornstalks rolled, disked, and plowed under. All leases should safeguard the fertility of the farm as far as possible by providing for the utilization by livestock on the farm of a reasonable proportion of the feedable crops and the return to the soil of the manure, straw, and other roughage. A landlord leasing land to a tenant who lives and keeps his livestock on another farm should, in particular, take precaution to secure the return of a part of the manure if the straw, corn stover, or other roughage is removed from the land rented. The lease should provide against trampling of fields by stock in the spring or in muddy weather and prohibit overgrazing or the pasturing of unringed hogs or breachy cattle. It is especially important to provide that noxious weeds shall not be allowed to go to seed on the premises or on roads or lanes adjacent thereto.

In addition to these safeguards the lease may specify the field and rotation systems in detail. It may even be desirable to specify the method of plowing—for instance, where terraces must be maintained to prevent erosion. Sometimes it is desirable to specify such an item as the method of threshing, to prevent the spread of weed seeds, and to reduce waste of grain.

COMPENSATION FOR IMPROVEMENTS

As pointed out, assurance of compensation for unexhausted improvements is essential in a lease granted only for a short term of years if the tenant is to be expected to farm conservatively and in a way that will increase rather than decrease the fertility of the farm and the value of the improvements. Compensation for improvements has been required by law in England for many years, but it has not been extensively practiced in the United States, so in this country we lack experience in determining values. England not only has laws on the matter but it has well-developed agencies by which practice in determining compensation is improved and standardized.

Improvements concerning which problems of compensation may arise may be classified as follows, this classification being based on points covered by the English agricultural-holding acts:

- (1) Erection, alteration, or enlargement of buildings, construction of silos, and the making or removal of permanent fences.
- (2) Laying down of permanent pasture.
- (3) Irrigation systems.
- (4) Making or improving roads or bridges.
- (5) Making or improving watercourses, ponds, wells, or reservoirs, or works for the application of water power or for supply of water for agricultural or domestic purposes.
- (6) Planting orchards or fruit bushes, and protecting young fruit trees.
- (7) Reclaiming waste land or building embankments and sluices against floods.
- (8) Drainage of land.
- (9) Repairs to necessary buildings other than repairs the tenant accepted the obligation to make.
- (10) Application to the land of lime, marl, or purchased fertilizers, or manure.
- (11) Consumption on the farm by livestock of feedstuffs not produced on the farm and of grain produced on the farm.
- (12) Laying down temporary pasture with clover, grass, alfalfa, and other seeds, sown not more than 2 years before the end of the tenancy.

In this country in special cases compensation may be needed in connection with the leveling of land for irrigation purposes and the terracing of land to minimize losses from soil erosion. Compensation may also be important in connection with land-improvement work like removing stone, stumps, brush, and weeds. Under the English law the various improvements numbered from 1 to 7, inclusive, are subject to compulsory compensation only when the landlord has given his consent to the making of the improvement. For drainage improvements (number 8) the tenant must give notice to the landlord not less than 2 nor more than 3 months before the work is to begin. During this period the landlord may make the improvement himself, charging the tenant a reasonable rent for its use after completion. To qualify for compensation for repairs (number 9) the tenant must have first given the landlord written notice of his intention and then waited a reasonable time for the landlord to have them made. No notice is required in connection with improvements numbered 10 to 12, inclusive. These English laws do not provide compulsory compensation for plowing, preparing, and seeding the land for harvest after the termination of the occupancy. This may be provided for in the lease by agreement.

Where it is expedient to have plowing or seeding done by the outgoing occupant for the convenience of an incoming occupant a preferred arrangement may be to have tenants leave as much acreage

plowed, prepared, and seeded as was plowed, prepared, or seeded for them. Penalties at agreed-upon amounts per acre of shortage should be arranged, and there should be provision to compensate tenants who are asked to do extra work of this sort.

The problem of determining the amount of compensation to be allowed for improvements numbered from 1 to 8, inclusive, is not especially difficult. The tenant should be allowed the reasonable cost of making the improvement minus any depreciation on the improvement that occurs before the termination of the lease contract. Compensation for such improvement may be made at the time the improvement is completed, or may await the termination of the lease. Where the usefulness of an improvement ends before the tenant leaves the farm the tenant should expect no compensation. In the case of durable improvements, on the other hand, usually the landlord should pay for the improvement when completed, and then add enough to the annual rent to cover the interest and depreciation. Where, as is often the case on share-rented farms, an improvement is of equal advantage to landlord and tenant the landlord should bear at least his proportionate share of the initial cost, compensating the tenant for his interest in any improvement remaining at the termination of their share relationship.

The compensation to be allowed for the residual value of manure and fertilizer applied to the farm land is a problem of considerable difficulty because of the lack of exact knowledge as to the actual quantity of fertility that is likely to remain in the soil under varying conditions. Frequently, the decision may be satisfactorily left to arbitration or to a disinterested third party. In the case of manure resulting from the feeding of crops that have been produced on the farm, compensation should not be allowed when such a feeding policy is recognized as the usual practice of the community. Sometimes, however, it pays better to sell crops than to feed them. Where this is the case the tenant, in order to encourage him to feed rather than to sell, may be compensated either by a deduction from his rent or by compensation for the unexhausted value of the manure applied to the soil.

In the case of other fertilizers it has been suggested that the initial valuation to be credited to the tenant be reduced for each year the land is used after application; 25 percent for ground limestone; 10 percent for ground raw phosphates; and for soluble fertilizers such as steam bonemeal, acid phosphates, and potash salts, 50 percent the first year and 75 percent the second year.² Although these percentages may not be regarded as correct for all conditions, they may be helpful to landlords and tenants in arranging terms for compensation.

PROVISIONS FOR ENFORCEMENT

It is desirable to include clauses providing methods for enforcing the contract. Enforcement clauses may deal specifically with (a) the performance of farm work, the making of repairs and other duties assumed by the tenant; (b) gross damage to the property rented through neglect or willful injury; (c) the making of repairs, the furnishing of capital, the supplying livestock and equipment, and other obli-

² From a bill to provide for compulsory compensation which was introduced in the legislature of the State of Illinois but failed of passage.

gations assumed by the landlord; (d) the payment of rent. The first of these considerations is especially important for a share-rent contract.

A clause to enforce compensation for failure to perform agreements on the part of the tenant or for damage to the property of the lessor may read as follows:

It is hereby agreed that in case the tenant shall fail to perform his agreements or any of them herein contained, then the landlord shall have a right to hire any person or persons he may see fit to perform the agreements of the tenant and all expense incident thereto shall be charged to the tenant and taken out of his share or interest in the property owned in common. It is further agreed that in case of gross damage to the property herein leased through neglect or willful injury by the tenant, the landlord shall have a right to terminate the agreement and lease; but the exercise of such right to terminate the agreement shall not impair the right of the landlord to bring action to collect damages for such injuries.

In many States a lien is created by law which provides that the landlord shall have first claim on the tenant's crops grown on the leased land for the payment of rent and advances made by him. In most of the Southern States the cropper is held to be a laborer and not a tenant, so ownership in the crop until after the division is vested in the landlord. The payment of rent is often secured by a chattel mortgage on the tenant's crops or on livestock, machinery, and implements. Such a mortgage is sometimes embodied in the lease contract, but, like any other mortgage, should be executed with all the formalities required for a mortgage and should be recorded in order to give notice to third persons of the rights of the landlord under the mortgage.

A clause providing for enforcing the landlord's undertakings and obligations to the tenant may read as follows:

It is hereby agreed that in case of failure of the said landlord to keep and perform any of the agreements hereinbefore mentioned or implied the said tenant may perform the agreement, deducting the reasonable expense for such performance from such rent as may be or shall become due, and in case the agreement which the landlord fails to perform is of such character that it may not be performed by the tenant the contract shall, at the option of the said tenant or his assigns, be forfeited.

Provided further, that nothing herein mentioned shall impair the right of the tenant to bring action for specific performance of the contract or for such damages as the said tenant may have suffered through failure of the landlord to perform the terms of the agreement.

It may be mutually agreed that any legal costs and expenses incurred by either party in enforcing the terms of the agreement shall be paid by the other party to the action. However, in several States this does not apply to attorneys' fees, and in any case the court will allow only such fees as are reasonable, irrespective of what may have been previously agreed upon.

ADJUSTMENT OF DIFFERENCES

The above somewhat strict provisions for enforcing the terms of the contract should be regarded as safeguards to be applied only in last resort. Misunderstandings and litigation between landlord and tenant are likely to be very expensive to both parties. So far as possible, it is desirable to anticipate points of conflict and provide for them when the contract is made, for at that time both parties are anxious to agree. If both parties have the right spirit, any subsequent unforeseen difficulties can be adjusted by mutual agreement. How-

ever, there may be occasions when disputes arise which cannot be so settled. Provision for adjusting such disputes may read as follows:

If the parties hereto are unable to agree upon any matter not definitely determined by this lease, each shall choose a referee, and they two shall choose a third, which three shall make a decision, and their decision shall be binding upon the parties hereto. None of said referees shall be related to either party or have any interest directly or indirectly, personally or otherwise, in the questions decided.

SOME SPECIAL PROBLEMS OF SHARE LEASES

In an earlier part of this bulletin we have discussed some considerations common to all leases whether cash or share. In the share lease, however, the relation of the landlord to the farm is so much more intimate than in the case of the cash lease that a number of problems arise which are not encountered in cash leases.

RESTRICTIONS ON OUTSIDE WORK BY TENANT

Since the rent of the landlord in the share lease vitally depends on the size of the crop the landlord needs some assurance that the tenant will not neglect the farm work in order to attend to outside interests. Therefore it is sometimes the practice to introduce into the lease a clause which specifies that the tenant shall not farm other land and that he shall not engage in other kinds of work that will distract his attention from the farm, such as engaging in the business of threshing or baling hay for others. Sometimes it is not desirable to make such a clause too rigid. It may be that the tenant can economically help his neighbors reap, thresh, bale, or put up silage, either in exchange for other labor or for cash payment. It may even be desirable for the tenant to farm other land if the original farm is not sufficiently large to engage all of his time. The restrictive clause should be drawn according to these special circumstances.

SAFEGUARDS WITH RESPECT TO JOINT EXPENDITURES AND SALES OF JOINTLY OWNED PROPERTY

In stock-share leases and other share contracts which approximate the character of economic partnership, each party is vitally interested in the wisdom and honesty with which expenditures and sales are made. It may be that the landlord has so great confidence in the tenant's honesty and discretion that he is willing to trust the tenant to transact all of this business. On the other hand, if the tenant is inexperienced in business matters, it may be to his interest, as well as to that of the landlord, that the latter make all purchases and sales for the joint account. Generally speaking, one party or the other should be designated for this purpose; for confusion is likely to arise where both are buying and selling without mutual consultation. The two parties to the contract should have a definite understanding with respect to this matter; otherwise, it may be a fertile source of disagreement.

Since there are numerous minor expenditures about which it is inconvenient for both parties to consult before acting, a clause reading as follows may be found satisfactory:

Expenditures for the joint account or sale of jointly owned materials, livestock, and other farm property, if not exceeding in each case the sum of \$25, may be made by the tenant without consultation with the landlord. All expenditures for the joint account and all sales of jointly owned property in excess of \$25 shall be made only on the mutual consent of both parties. It is further

agreed that whenever an expenditure or sale is made on joint account the party making such expenditure or sale shall furnish the other party satisfactory vouchers or receipts.

Sometimes it is found desirable to require that all business for the joint account shall be transacted through a specified bank, e. g.:

All joint business in the way of payments and receipts shall be transacted through the _____ Bank of _____.

When the joint interests of the two parties are greatly intermingled, as is likely to be the case in a share-lease contract which partakes of the character of an economic partnership, it is essential that careful records be kept of all transactions, and it is desirable to require in the contract itself the keeping of such records. The following is a clause providing for this purpose:

The tenant shall keep a strict financial record of the farm business, which includes a careful inventory of the land, equipment, and personal property, excepting household goods, and a complete record of the purchases and sales on account of the farm business, excepting household and other personal expenses of the tenant.

RESERVATION OF RIGHT OF SUPERVISION BY LANDLORD

In the case of many share contracts the tenant is a young man, who will benefit by the advice and supervision of the landlord; and, in order to avoid misunderstanding, it may be desirable to insert in the contract a clause which will provide for the exercise of such supervision. Such a clause may read as follows:

The tenant shall consult the landlord, or his representative, about all matters pertaining to said farm, including the fields to be planted, the plowing, cultivation, harvesting, and the handling, disposition, and sale of the crops and other products and stock of said farm, abiding by the decision of the landlord or his representative.

AMOUNT OF RENT AND TIME AND METHOD OF PAYMENT

Great care should be used in defining fully the method of dividing the products of the farm. It should be clearly indicated whether the division is to be made before certain expenses are deducted or after such deduction. This is especially important in the case of those share leases which are approximately economic partnerships. It should also be carefully stated what use of undivided products may be made by each party. Often, for instance, the tenant is allowed milk, eggs, and other products for family use out of the joint product of the farm. In some instances, also, the landlord receives certain things for family use out of the undivided product. However, if it is desired to make an accurate and careful division, it is necessary to take account of all these minor items, and in this case the tenant or the landlord should be charged for all jointly owned products used by him. In any case the lease should make clear the rights of the respective parties in regard to these matters.

It is also frequently customary to allow the tenant to feed work stock from undivided grain or hay and sometimes to feed a few hogs also. Very commonly the tenant is allowed to feed poultry out of the undivided grain. If these privileges are to be allowed, however, the contract should provide definitely the maximum number of each kind of stock that the tenant may keep in this manner. A more accurate method is to require each party to feed all private

stock out of his share or to charge him for all feed used out of undivided profit.

When the share lease applies only to crops, and not to livestock, it is frequently customary to charge the tenant cash rent for the use of pasture, since the landlord receives no benefit from this use. Sometimes a small amount of pasture may be allowed free as a special inducement to the tenant, or it may be balanced by some special advantage to the landlord in the division of the crops. However, when the lease applies both to stock and crops both parties benefit from the use of the pasture, and no arrangement for pasture rent is necessary.

The time of division or payment of rent should be carefully indicated. On the great majority of farms the custom is to make the division or to pay the rent after the principal products of the farm have been harvested. In the case of dairy farms it is not infrequently customary for the landlord to receive his part of the milk check each month. However, when the lease is of the character of an economic partnership in which division is made only after expenses are deducted, it may be found difficult to divide the proceeds of the business so frequently.

It is also desirable to specify definitely where the landlord's share of the crop is to be delivered to him, as well as the method of making the division. Sometimes the division is made in the field, as in the case of corn, and some leases contain a provision that in order to facilitate division, corn is to be shocked in straight rows across the field with the same number of corn rows included in each shock row. Delivery is usually made in the crib or bin or at market. If it is desired that the tenant shall deliver the landlord's share at the shipping point this should be specified in the contract. This provision is frequently used as one of the balancing items in more or less complicated share leases. However, if the simplified type of lease hereafter suggested is employed, delivery of the landlord's share should be regarded as a part of the labor of the farm and should be included in the general estimate of the cost of labor, made preliminary to the determination of the shares of the respective parties.

Frequently the landlord trusts the tenant to make an honest division of the product. However, if the landlord is unwilling to do so he should specify that the division shall be made in the presence of himself or his representative.

FINAL DIVISION OF JOINTLY OWNED PROPERTY

When livestock, crops, implements, feed, and other property are owned jointly, it is desirable to provide for an equitable method of dividing the jointly owned property in case of termination of the lease. Several practicable methods of making such division are employed, some of which are stated in the following clause from an Oklahoma lease:

At the termination of this lease the jointly owned property may be disposed of in one of three ways: Such property may be appraised by disinterested parties selected by the landlord and tenant, either one paying the other one-half of the appraised value and retaining the entire property. If a division of the property is desired, the tenant shall divide the jointly owned property into two lots, and the landlord shall take his choice of the two lots. In case neither of these plans is agreed upon, the property shall be sold at public auction and the proceeds

equally divided. Nothing herein shall be construed, however, to prevent the disposal of the jointly owned property by any other plan mutually agreeable to both parties.

The general provision for arbitration of disputes suggested above should be applied to the division of property at the termination of the lease.

At the beginning of a lease, when either party is buying a share in property to be held in common, such as live stock, implements, or feed, it may be found difficult to agree on the price at which the share shall be taken over. In case of such disagreement, disinterested parties should be employed to appraise the property and thus settle the dispute.

FUNDAMENTAL PRINCIPLES UNDERLYING ALL LEASE CONTRACTS

A great many difficulties in the making of satisfactory leases may be eliminated by proper appreciation of a few fundamental principles. The farm lease is essentially a contract in which the landlord sells to the tenant the restricted right to use a farm for a certain period of time. It is of great importance to determine as accurately as possible the correct value of this right of use. If the price charged is too high the tenant is likely to find the business of farming unprofitable, and will be unable to continue the arrangement and live up to it. It is of the highest importance both to landlord and tenant that the lease be so drawn as to result in stability of tenure, for frequent moves are not profitable to either party.

Frequently, landlords assume that they should have a rent for the farm equivalent to a certain rate of return on the value of the farm; that is, that the farm should yield at least 4 or 5 percent, or some other rate of interest, on its value. In some regions this assumption may be a reasonable starting point in determining proper terms, but there are a number of conditions which tend to make such a method an improper basis of determining rental value. In the first place, in regions where land value had been rising rapidly it was found that farm land has been greatly overvalued in relation to its income because the increase in value itself was regarded as a part of the reward of land ownership. Men will pay much more for farm land that is rapidly increasing in selling value than they would pay if rent or farming profits were regarded as the only source of return. For instance, it has been found in Iowa that where this condition prevailed the average annual cash rental value of land was little more than 2 percent of the average selling value. To charge a tenant 5 or 6 percent on such value would be to handicap him seriously in the possibility of making a profit from his farming operations.

The overvaluation of land is sometimes due to the tendency of farmers to buy farm land for other than financial considerations. The farm is a home, and one may pay a good deal for neighborhood advantages, for proximity to friends, relatives, church, and school, as well as for other residential advantages, including the farmhouse and other conveniences. Again, farmers have a certain pride of ownership which often will cause them to pay an unduly high price for a fine farm.

The landlord and tenant jointly make contributions to the business of production. Each should receive for his contributions what they

are worth. If the total product of the farm, year after year, is not enough to pay the value of these contributions, the business must be regarded as unprofitable. As a matter of fact, however, the annual value of land may be considered a surplus above the other expenses of production. If some permanent change occurs to reduce the total average value of the product, in the long run the rental value of the land must fall because less will remain after paying the cost of securing the other factors of production. On the other hand, if a permanent change occurs to increase the average value of the product without increasing in the same proportion the other expenses, there will be a larger remainder that may be obtained by the landlord as rent.

The lease contract, especially in the case of the cash lease, tends to obscure this fact, for in the cash lease the tenant agrees to pay the landlord a fixed cash rent and receives for his own expenses of production and profit whatever may be left after paying this rent. Landlords should bear in mind, however, that in the long run tenants must earn enough after paying rent to cover their expenses of production and a fair return for their own labor and risk. Moreover, a good tenant should receive more for his time than a poor tenant. In other words if the return is such that an ordinary tenant can make fair wages, an enterprising and skillful tenant should receive a superior reward for his enterprise and skill. These principles should not be interpreted to mean that a shiftless, indolent, and inefficient tenant should be guaranteed a living.

PRINCIPLES UNDERLYING SHARE CONTRACTS

In the share lease the landlord usually furnishes something more than merely the use of the farm. In the simplest form of the share contract the landlord at least participates in the risk of the enterprise arising from variations in yields and in prices. In the more complex forms, such as the stock-share lease, the landlord may furnish half of the working capital or more, may bear half of the expenses, and may share in the management, so that he is actually a partner with the tenant in the enterprise.

This complexity in the relationship of landlord and tenant makes it much more difficult to determine the fair division of the product, especially when there is no system of accounting by which the relative value of the respective contributions of the two parties may be measured. The result has been that the actual systems of share leasing which have become customary in different parts of the country and in different types of farming are largely the product of a rough process of experiment. Different items are used to balance one another in a sort of rough and ready manner without the employment of any underlying and permanent principle of division. There is such a bewildering variety of privileges and obligations of uncertain money value that it may be practically impossible, even with a careful system of accounting, to determine the actual net shares of the respective parties. Such items as the twine bill, the threshing bill, the furnishing of grass seed and horse feed, the fertilizer bills, hauling crops to market, and the use of pastures, are juggled back and forth in various combinations. The confusion is made greater by the yearly variation in the actual and relative value of the various factors of cost and by changes in crop acreages and farm practice.

It is important that this rough-and-ready method of adjustment, which was not seriously inaccurate in the pioneer days of our agriculture, when the relative values involved were not nearly so large as at the present time and when fewer of our farmers were tenants, should give way to a simpler and more accurate method of bargaining under which it would be possible in advance for each party to balance with some degree of accuracy his prospective expenses and receipts. In formulating such a contract it is necessary to classify the contributions of the respective parties. We may recognize the following main groups:

- (a) The use of real estate and expenses on account of real estate, including taxes, insurance on buildings, and repairs.
- (b) Ordinary farm labor.
- (c) Work stock.
- (d) Special skilled labor hired on special occasions.
- (e) Farm implements and operating equipment.
- (f) Livestock other than work animals.
- (g) Miscellaneous expenses.

The landlord, of course, provides the real estate and generally pays the expenses on account of real estate. However, it is frequently customary for the tenant to furnish the unskilled labor necessary for making repairs on buildings and fences, and in the case of long leases he may even furnish the unskilled labor for making some improvements.

If the use of the real estate is a factor which the landlord is best in a position to contribute, the labor needed to work the farm can best be contributed by the tenant. Other factors of production may be owned by one or the other of the parties and a practicable plan of leasing worked out, but seldom is a rented farm to be found on which the landlord furnishes any large share of the labor used to operate it. On the ordinary family-sized farm the tenant who is a capable worker may need to hire practically no labor especially if his children are old enough to help. If labor must be hired to assist in working the farm, the tenant should pay for it, as he is in the better position to control its cost and to get the most work for the money spent. His share of the returns should be large enough so that he will be amply rewarded for his willingness to do all he possibly can himself and for his ability to use labor effectively.

In regard to the work animals and equipment there is more diversity of practice than there is in the furnishing of land or labor. In some parts of the country, especially in the South, the very poor tenants may furnish only the labor, while the landlord furnishes the land, buildings, work animals, and equipment. On other southern farms, and usually in the North, the tenant farmer furnishes the labor to work the farm as well as the work animals and equipment. The one who furnishes the work animals and equipment usually contributes the feed, upkeep, and replacement costs associated with the use of these factors of production. However, on stock-share farms the tenant, although contributing the work animals and equipment, generally has the right to feed these animals from the undivided feed and supplies, and not uncommonly the landlord owns a part or full interest in some of the equipment or in some of the horses.

The simplest kind of share contract would be one in which all expenses, including the value of the use of land, were shared in

some definite proportion, as half and half, and all receipts were shared in the same proportion. This would be in the fullest sense an economic partnership. Since, however, it is customary and largely desirable that the landlord shall invariably furnish the use of real estate while the tenant shall furnish the farm labor and also usually the work stock and equipment, it is possible to make a simple and accurate adjustment as follows: First an estimate should be made of the fair value of the use of the land and of the value of ordinary farm labor, with additional estimates of the cost of horse labor and the annual cost of the use of the equipment. The value of each of these items may be determined with a fair degree of accuracy in advance. The ratio of the two values should be determined, and all other expenses and receipts should be borne in the same proportion. Suppose, for instance, that it is found that the fair value of the use of the land for a year is \$500, while the fair value of the farm labor, horse labor, and use of equipment is \$1,000. The ratio of these quantities is 1 to 2. The landlord should then pay one-third of all other expenses and the tenant two-thirds of all other expenses. After these other expenses have been deducted from the total receipts the landlord should receive one-third of the remainder and the tenant two-thirds of the remainder. If the land and labor have been fairly valued, the effect of this arrangement will be to apportion the shares of the product in exact proportion to the value of the contributions of the respective parties and there will be no unknown items in the calculation.

It may be objected that this arrangement will not conform to the convenience of the two parties with respect to contributing to expenses. Thus the tenant may not have sufficient funds to bear the share of expenses allotted to him, or it may not be convenient for the landlord to furnish his designated share of expenses. It is clear, however, that the total expenses must be borne by one or both of the two parties in some proportion. Whichever party is lacking in the necessary funds to defray his share of the expense should borrow the necessary amount from the other party or from some other source of credit, paying interest on the loan until the end of the crop year, when the net receipts are divided and the loan may be repaid.

This method of simplifying the rental contract conforms in part to customary practice. In most parts of the country a customary share has developed which is supposed to represent roughly the proportionate value of the invariable contributions of the respective parties. For instance, in the Cotton Belt it is customary for the tenant when furnishing work stock to pay the landlord one-fourth of the cotton and one-third of the grain. In the newer wheat regions it is generally customary for the tenant to furnish work stock and implements and pay one-third of the grain. Where land is more valuable the tenant will pay one-half of the grain. These customary shares, however, do not take into account the variation in value between individual farms, and consequently other items of expense such as the twine bill, the threshing bill, the fertilizer bill, the furnishing of the seed grain, and the amount of rent for special privileges payable in cash are employed as balances, resulting in an unduly complicated contract.

The method of adjusting the share contract suggested above has been proposed by a number of students of the tenant contract. How-

ever, it has frequently been assumed that the proportion should always be half and half—that is, that the landlord should furnish the land and the tenant the labor, sharing other expenses equally and sharing equally in the net receipts. There is no reason, however, why the proportion should always be in this ratio. The values of the respective contributions vary greatly from section to section and from farm to farm. Thus, in the case of very intensive crops, such as sugar beets, cotton, tobacco, and various truck crops, the value of labor in proportion to the value of land is likely to be greater than in the case of general farm crops. This difference is commonly reflected in ordinary share contracts by giving a greater share to the tenant. For instance, in the South the tenant pays the landlord one-third of the grain but only one-fourth of the cotton. Moreover, some farms are more valuable than other farms. The good farms, however, are likely to attract the more efficient tenants, and therefore the normal ratio of the value of land to the value of labor in the community may not be so greatly disturbed by this element. In other words, if the annual value of ordinary land in the community is one-half the value of the labor of the ordinary tenant, it is quite possible that the value of a farm of superior fertility, location, and equipment may be balanced against the superior efficiency of the tenant who may be secured for that farm.

These differences between the relative values of land and labor required in the production of different crops give rise to one objection to the system of share renting suggested above, an objection which is common to all share-renting systems which provide a uniform rent share for all farm enterprises. The uniform share may overvalue the labor applied to one enterprise as compared to that required for other enterprises. If this is true, the farmer may be tempted to devote more labor to the overvalued enterprise at the expense of those undervalued. Thus, when the equitable rent shares of corn and cotton considered separately are respectively one-third and one-fourth, a uniform share rent of two-sevenths would tend to undervalue labor employed on cotton and correspondingly to overvalue that employed on corn.

However, when the landlord participates actively in the management of the farm he may prevent any disproportionate use of labor that might result from a uniform-share contract.

In estimating the value of the annual use of land for the purpose of determining a fair division in the farm contract no deduction should be made for the annual expenses on account of the farm real estate, including expenditures for repairs, taxes, and insurance, for these expenses are in reality covered by the estimated annual value of the land.

THE PERSONAL RELATIONSHIP

While a carefully considered lease may do much toward promoting a harmonious relationship between landlord and tenant it will be futile in preventing trouble unless the two parties have the proper attitude toward one another. If either party is captious or quarrelsome, being inclined to dispute minor details, the arrangement is not likely to prove a happy one. If this spirit prevails, numerous specifications and safeguards in the contract, while affording some

protection to the respective parties, may only serve to call attention to points that may be made subjects of dispute.

At the outset each party should consider well not only the terms of the bargain but also the general desirability of the bargain itself.

The landlord should select his tenant with special regard to his personal qualities; of these honesty is of first importance, especially in the case of share renting. Good nature and tractability are of great importance. Experience and efficiency as a manager may not be so important from the landlord's standpoint in cash renting, and may be of less importance than such qualities as honesty, good nature, and energy, even in a share contract, provided the landlord is himself experienced and can devote considerable time to supervision. The landlord should also assure himself that the tenant can obtain the necessary equipment and capital to operate efficiently.

To obtain and hold a tenant having the desirable qualities the landlord can well afford to make numerous minor concessions in the contract. Indeed, a sharp bargain which proves a source of dissatisfaction and hard feeling on the part of a good tenant may prove a costly bargain for the landlord.

A landlord will usually find that the easiest way to get his tenant to do certain things is to make it profitable for the tenant to do them.

The tenant, in making a choice, needs to consider both the landlord and the farm. The importance of a good landlord is in direct proportion to the intimacy of the relationship imposed under the terms of the contract. In a cash lease the relationship may often be largely impersonal, whereas in a stock-share lease the relationship is so close as to make good feeling and the spirit of mutual cooperation and concession essentials of success.

The proper choice of a farm involves considerations so numerous that they cannot be fully elaborated in this bulletin. However, just as the landlord can afford to make some concessions in order to secure a good tenant, so the tenant should remember that the difference in productivity between a good and a poor farm may be so great as more than to compensate for a contract that may be illiberal in minor details.

In general the tenant should look well to the character and condition of the land, the presence or absence of noxious weeds, the character and condition of the dwelling house, barns, and other outbuildings, the fences, the character of the roads, the water supply, the pasture facilities, and supply of wood. The tenant may consult the outgoing tenant, the neighbors, his banker, the thresherman, and other persons in a position to give accurate information.³

³ See Farmers' Bulletin 1088, "Selecting a Farm."